APPENDIX

Constitutional and Statutory Provisions Involved

United States Constitution, Article VI

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

United States Constitution, Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

National Labor Relations Act,
Sec. 7. (29 U.S.C. Sec. 157)

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of

collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8(b)(4) (29 U.S.C. Section 158, (b)(4))

It shall be an unfair labor practice for a labor organization or its agents . . .

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the rep-

resentative of such employees under the provisions of section 9: *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act:

Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with

whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution:

Sec. 8(b)(7) (29 U.S.C. Sec. 158(b)(7))

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act,

(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or

(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided,* That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section

9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further,* That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Section 9 (a) and (b) (29 U.S.C. Sec. 159(a) and (b))

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect. . . .

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided,*

That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

Opinion of District Court of Appeal of Florida, Third District, Filed and Entered October 29, 1968, Reported at 215 So.2d 51

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT—JULY TERM, A.D. 1968

CASE NO. 67-853

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DISPOSED OF.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Appellant,

vs.

ARIADNE SHIPPING COMPANY LIMITED, a Liberian corporation,

Appellee.

Opinion filed October 29, 1968.

An Appeal from the Circuit Court for Dade County, Thomas E. Lee, Jr., Judge.

Kastenbaum, Mamber, Gopman, Epstein & Miles, for appellant.

Shutts & Bowen and Cotton Howell; Muller, Schenerlein & Bare, for appellee.

Before CHARLES CARROLL, *C.J.* and PEARSON and HENDRY, *JJ.*

HENDRY, *Judge.*

This appeal was taken by the defendant below from a permanent injunction entered by the Circuit Court of Dade County.[1] The Appellant is a labor organization composed of persons who perform the labor of loading and unloading ships in Miami, Florida; the appellees are both engaged in the business of owning and operating cruise ships which transport persons from Port Everglades, and Miami to various points of interest in the Carribean and West Indies area. The ships are of foreign registry, owned by Liberian and Panamanian corporations. It must also be noted that none of the members in the appellant labor union are employed to perform any work in connection with the operation of the cruise ships involved herein; moreover, the

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[1] "FURTHER ORDERED, ADJUDGED and DECREED that the National Labor Relations Board has no jurisdiction in this cause; that there is no labor dispute; and that this Court has jurisdiction in this case.

"FURTHER ORDERED, ADJUDGED and DECREED that the Defendant's actions are in violation of Florida law; that Plaintiffs are suffering and will continue to suffer irreparable injury unless enjoined; it is therefore

"ORDERED that pending final Hearing in this matter Defendant its officers, agents, allies, confederates and attorneys are enjoined and restrained from:

"1.—Picketing and patrolling, with signs and placards stating, alleging or inferring that Plaintiffs' vessels are unsafe;

"2.—Distributing literature, handbills or leaflets stating, alleging or inferring that Plaintiff's vessels are unsafe;

"3.—Picketing or patrolling with signs or placards indicating or inferring that a labor dispute exists between Defendant and Plaintiffs, by any statement, legend or language alleging Plaintiffs pay their employees substandard wages;

"4.—By any manner or by any means, including picketing or the distribution of handbills, inducing or attempting to induce customers and potential customers of Plaintiffs to cease dong business with Plaintiffs."

* * *

union itself does not represent any of the employees who work on the ships.

In May of 1966, the appellant established a picket line on the public docks of Miami, adjacent to the berths where the ships operated by the appellees were being loaded and unloaded. Some of the appellant's members carried picket signs and placards; others distributed handbills to passengers who were embarking or disembarking from the ships.[2]

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[2] (Partial text of handbill:)

"WARNING!"

"IS YOU CRUISE SHIP A FLOATING DEATH TRAP?"

"CAN A SUB-STANDARD FOREIGN FLAG CRUISE SHIP TURN YOUR HOLIDAY INTO A HOLOCAUST?"

"You, I am sure, are aware of the old adage, that experience is the best teacher. Yet, thousands of unsuspecting Americans continue to place their lives in jeopardy every day on cruises aboard foreign flag floating fire-traps. The sinking of the Yarmouth Castle was an 'experience' of which all Americans should take heed, as to the unsafe conditions existing today in foreign cruise ships. The Yarmouth Castle flew under a Panamanian flag and when it sank, 90 lives were lost.

"What can passengers of these so-called 'luxurious' cruise ships like the 'Yarmouth Castle' do to protect themselves? The answer is—know your ship. All ships sailing out of U. S. Ports are inspected by the U. S. Coast Guard. The U. S. Coast Guard can enforce U. S. Safety standards only on U. S. ships. Ships under foreign flags are subject to far less stringent regulations than are those under U.S. flags. There is a vast difference in the safety regulations which apply to ships of different countries—and the difference can be a matter of life or death. The strictest safety regulations of all are those of the United States. Yet, despite the fact that a majority of all the cruise ships that leave the ports of Miami and other United States ports, are American owned, they carry a foreign flag. Why is this? The answer is simple, in that in operating under a 'flag of convenience' offered by small foreign countries such as Liberia and Panama, hwose safety standards are minimal, cruise lines then can ignore construction standards, the equipment, the age limits, the regular inspection, over-

Thereafter, appellees instigated this action to enjoin the labor union from picketing and distributing the handbills in question. At the trial court hearing, testimony was taken which tended to show the following: (1) that the union was concerned with safety conditions aboard the two foreign vessels; and (2) that the union was attempting to inform the public that the American residents who were working on the cruise ships were being paid substandard wages. The trial court first determined that it had jurisdiction in the matter, and further, that such jurisdiction was not pre-empted by the National Labor Relations Board since no labor dispute existed. The court next decreed its order which temporarily restrained the appellants from their activities, setting forth the court's findings and the provisions of the injunction, supra, note 1. An interlocutory appeal was taken by the appellants which tested the question of whether or not the circuit court did, in fact, have jurisdiction over the dispute. We answered, in International Longshoreman's Association, Local 1416, AFL-CIO v. Ariadne Shipping Company, Ltd., Fla.App.1967, 195 So.3d 238, that it did have jurisdiction and could properly entertain the

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haul requirements and other safety regulations which U. S. law sets for all our ships."

* * *

(Text of placards:)

"ARIADNE
REFUSE
To Maintain Adequate
Safety Conditions
FOR
PASSENGERS &
EMPLOYEES
International Longshoremen's
Association—Local 1416
Miami, Fla."

"BAHAMA STAR
REFUSE
To Maintain Adequate
Safety Conditions
FOR
PASSENGERS &
EMPLOYEES
International Longshoremen's
Association—Local 1416
Miami, Fla."

* * *

action. Thereafter, based on our affirmation of the jurisdictional issue, the circuit court changed the nature of its order to that of a permanent injunction.

The permanent injunction was specifically designed to counter the harmful effects of the appellant's false accusations regarding the unsafeness of the ships. Furthermore, the injunction also embodied the court's finding that no real dispute over wages really existed, and therefore, publicizing accusations as to that grievance was also forbidden. Thus, we affirm the order's first three provisions.

However, in framing a proper remedy for these actions, the trial court caused one section of the order to be too broad, i.e., Provision Four. We therefore find merit in appellant's contention that the precise working of this particular provision does in fact put the union in jeopardy as to its rights and obligations for any future activity. A succinct statement which summarizes the Florida holding in cases of injunctions which are too broad appears in Florida Peach Orchards, Inc. v. State, Fla. App. 1966, 190 So.2d 796:

> "An injunctive order should never be broader than is necessary to secure to the injured party, without injustice to the adversary, relief warranted by the circumstances of the particular case. Moore v. City Dry Cleaners and Laundry, Fla. 1949, 41 So.2d 865; and Seaboard Rendering Co. v. Conlon, 1942, 152 Fla. 723, 12 So.2d 882. An injunctive order should be adequately particularized, especially where some activities may be permissible and proper. Moore v. City Dry Cleaners & Laundry, supra. Such an order should be confined within reasonable limitations and phrased in such language that it can with definiteness be complied with, and one against whom the order is directed should not be left in

doubt as to what he is required to do. Pizio v. Babcock, Fla. 1954, 76 So.2d 654." Id. at 798.

A final point raised by the appellant questions the correctness of the court's order which granted appellee's motion to dissolve the surety bond and discharge the surety for the injunction order. We dealt more fully with that question in International Longshoremen's Ass'n., Local 1416, AFL-CIO v. Eastern Steamship Lines, Inc., Fla.App. 1968, 206 So.2d 473, but reiterate here that such order was in error since it purported to preempt all of the appellant's rights against the surety bond before an ultimate determination of the injunction's correctness had been made.

As to the rest of the permanent restraining order, we find no error. Therefore, the order appealed from is affirmed in part and reversed in part.

Opinion of District Court of Appeal of Florida, Third District Filed and Entered February 21, 1967, on Appeal From Temporary Restraining Order, Reported at 195 So.2d 239

No. 66-982

District Court of Appeal of Florida

Third District

Feb. 21, 1967

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Appellant,

v.

ARIADNE SHIPPING COMPANY, Limited, a Liberian corporation, and Evangeline Steamship Co., S. A., a Panamanian corporation,

Appellees.

An Interlocutory Appeal from Circuit Court for Dade County; Thomas E. Lee, Jr., Judge.

Kastenbaum, Mamber, Gopman, Epstein & Miles, Miami Beach, for appellant.

Shutts & Bowen and Cotton, Howell, Miller, Schenerlein & Bare, Miami, for appellees.

PER CURIAM.

Affirmed. See: Overstreet v. Frederick B. Cooper Co., Inc., Fla. 1961, 134 So.2d 225; McCulloch v. Sociedad Nacional de Marineros de Honduras, 372 U.S. 10, 83 S.Ct. 671, 9 L.Ed.2d 547; Incres Steamship Company, Ltd. v. International Maritime Workers Union, 372 U.S. 24, 83 S.Ct. 611, 9 L.Ed.2d 557.

Order of Supreme Court of Florida Denying Certiorari, Filed and Entered March 19, 1969

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1969—WEDNESDAY, MARCH 19, 1969

CASE NO. 38,098

DISTRICT COURT OF APPEAL—THIRD DISTRICT

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Petitioner,

vs.

ARIADNE SHIPPING COMPANY, LIMITED, ETC., *et al.,*

Respondents.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ROBERTS, DREW, THORNAL, CARLTON and BOYD, JJ., concur.

ERVIN, C.J., and ADKINS, J., dissent.

A True Copy

Order of Supreme Court of Florida Denying Certiorari
Filed and Entered March 19, 1969

TEST:

/s/ SID J. WHITE
Sid J. White
Clerk Supreme Court

cc: Hon. W. P. Carter
Hon. E. B. Leatherman
Messrs. Kastenbaum, Mamber, Gopman, Epstein & Miles
Messrs. Shutts & Bowen

Order of Circuit Court, Dade County, Florida, Granting Permanent Injunction, Filed and Entered May 1, 1967

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

IN AND FOR DADE COUNTY

No. 66C-5523 (Lee)

ARIADNE SHIPPING COMPANY LIMITED, a Liberian corporation and EVANGELINE STEAMSHIP CO., S.A. a Panamanian corporation,

Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416 AFL-CIO,

Defendant.

ORDER

THIS CAUSE HAVING come on for hearing on the Plaintiff's Motion for Final Summary Judgment permanently enjoining the Defendant, the Court having heard argument of the respective parties, having examined the file and being otherwise fully advised in the premises, it is hereby

ORDERED, ADJUDGED and DECREED that Plaintiffs' Motion be and hereby is granted, the injunction being made permanent as more fully set forth in this Court's Order of May 26, 1966.

DONE AND ORDERED in Chambers, in Miami, Dade County, Florida, this 1 day of May, 1957.

THOMAS E. LEE, JR.
JUDGE, CIRCUIT COURT

Order of Circuit Court, Dade County, Florida, Granting Temporary Restraining Order, Filed and Entered May 26, 1966

In the Circuit Court of the 11th Judicial Circuit

In and For Dade County, Florida

In Chancery

Case No. 66C-5523 (Lee)

Ariadne Shipping Company, Limited, a Liberian corporation, and Evangeline Steamship Company, S.A., a Panamanian corporation,

Plaintiffs,

v.

International Longshoremen's Association, Local 1416, AFL-CIO,

Defendant.

Order

This cause having come on for Hearing on the verified Complaint of the Plaintiffs, Ariadne Shipping Company Limited, a Liberian corporation, and Evangeline Steamship Company, S.A., a Panamanian corporation, and on the several Motions of the Defendant, International Longshoremen's Association, Local 1416, AFL-CIO, to Dismiss, the Court having heard testimony, argument of counsel for the respective parties, having examined the file and being fully advised in the premises, it is

Ordered, Adjudged and Decreed that all the Defendant's Motions be and the same are hereby denied.

Order of Circuit Court, Dade County, Florida, Etc.

Further ORDERED, ADJUDGED and DECREED that the National Labor Relations Board has no jurisdiction in this cause; that there is no labor dispute; and that this Court has jurisdiction in this cause.

Further ORDERED, ADJUDGED and DECREED that the Defendant's actions are in violation of Florida Law; that Plaintiffs are suffering, and will continue to suffer irreparable injury unless enjoined; it is therefore

ORDERED that pending final Hearing in this matter Defendant, its officers, agents, allies, confederates and attorneys are enjoined and restrained from:

1.—Picketing and patrolling, with signs and placards stating, alleging or inferring that Plaintiffs' vessels are unsafe;

2.—Distributing literature, handbills or leaflets stating, alleging or inferring that Plaintiffs' vessels are unsafe;

3.—Picketing or patrolling with signs or placards indicating or inferring that a labor dispute exists between Defendant and Plaintiffs, by any statement, legend or language alleging Plaintiffs pay their employees substandard wages;

4.—By any manner or by any means, including picketing or the distribution of handbills, inducing or attempting to induce customers and potential customers of Plaintiffs to cease doing business with Plaintiffs.

Order of Circuit Court, Dade County, Florida, Etc.

Further Ordered, Adjudged and Decreed that the Plaintiffs post a Bond in the total amount of Five Thousand Dollars, ($5,000.00),

Done and Ordered in Chambers, in Miami, Dade County, Florida, this 26th day of May, 1966.

Thomas E. Lee, Jr.
Judge Circuit Court

Defendant's Special Motion to Dismiss For Lack of Jurisdiction

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
IN CHANCERY
No. 66C 5523

ARIADNE SHIPPING COMPANY LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S.A., a Panamanian corporation,

Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Defendant.

COMES NOW, the Defendant, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO, by and through their undersigned attorneys and files this their Special Motion to Dismiss and/or Quash the Complaint and says:

1. Defendant moves to dismiss and/or quash the Complaint and cause on the ground that this Court does not have jurisdiction over the subject matter of this suit.

Defendant's Special Motion to Dismiss
For Lack of Jurisdiction

2. That the Plaintiffs have charged the Defendant Union with engaging in activities which are either protected or prohibited by the National Labor Relations Act.

3. That the Plaintiffs are engaged in activities which affect interstate commerce and/or foreign commerce in sufficient quantities for the National Labor Relations Board to assume jurisdiction over this matter or in the alternative that the labor disputes involved herein affects interstate commerce and/or foreign commerce in sufficient quantities for the National Labor Relations Board to assume jurisdiction of the matters alleged in the Complaint.

4. That by virtue of the fact that Interstate Commerce and/or Foreign Commerce is involved or affected and that by virtue of the fact that the Plaintiffs have charged in their Complaint that the Union is engaged in an activity which is either prohibited or protected by the National Labor Relations Act, sole jurisdiction of this matter is in the National Labor Relations Board, and that this Court may not enjoin such activity nor may any State Court invoke its injunctive process to prohibit such activity.

WHEREFORE, Defendant prays that this Court investigate this matter to determine whether interstate commerce or foreign commerce is involved or affected, and thereupon dismiss or quash the complaint.

Defendant's Special Motion to Dismiss
For Lack of Jurisdiction

KASTENBAUM, MAMBER, GOPMAN,
EPSTEIN & MILES
Attorneys for Defendant

By Allan M. Elster
For the Firm

I HEREBY CERTIFY that a true and correct copy of the foregoing Special Motion to Dismiss was mailed this 26 day of May, 1966 to SHUTTS & BOWEN, First National Bank Bldg., Miami, Florida and MULLER, SCHENERLEIN & BARE, 100 Biscayne Boulevard North, Miami, Florida, Attorneys for Plaintiffs.

Allan M. Elster

Defendant's Motion to Dismiss and/or Quash

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
IN CHANCERY
No. 66C 5523

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S.A., a Panamanian corporation,

Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Defendant.

COMES NOW the Defendant, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO, by and through its undersigned attorneys and without waiving its Special Motion to Dismiss and/or Quash for Lack of Jurisdiction heretofore filed in this cause, files this, its Motion to Dismiss and says:

1. Defendant moves to dismiss the complaint and cause on the ground that the Plaintiffs have charged the Defendant Union with engaging in activities which are protected by the first, fifth, ninth, tenth and fifteenth amendment to the United States Constitution and by Section 13 of the Declaration of Rights of the Constitution of Florida.

Defendant's Motion to Dismiss and/or Quash

WHEREFORE, Defendant prays that this Court dismiss or quash the complaint.

KASTENBAUM, MAMBER, GOPMAN, EPSTEIN & MILES
Attorneys for Defendant

By Allan M. Elster
For the Firm

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss and/or Quash was mailed this day of May, 1966 to SHUTTS & BOWEN, First National Bank Building, Miami, Florida, and MULLER, SCHENERLEIN & BARE, 100 Biscayne Boulevard North, Miami, Florida, Attorneys for Plaintiffs.

Allan M. Elster

Defendant's Motion to Dissolve and/or Vacate Temporary Injunction

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
IN CHANCERY
No. 66C 5523 (Lee)

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S.A., a Panamanian corporation,

Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Defendant.

COMES NOW, the Defendant, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO, by and through their undersigned attorneys, and files this, their Motion to Dissolve and/or Vacate Temporary Injunction, and as grounds for said Motion, says:

1. That on the 26th day of May, 1966, this Court entered a Temporary Injunction in the cause herein, enjoining the Defendant, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO, from engaging in picketing and handbilling directed against the Plaintiff corporation.

Defendant's Motion to Dissolve and/or Vacate Temporary Injunction

2. The evidence now established shows that this Court did not and does not have jurisdiction of the subject matter of this suit, and that sole jurisdiction of this matter is in the National Labor Relations Board, and that this Court may not enjoin such activities, nor invoke its injunctive processes to prohibit such activity.

3. That the evidence now established further shows that the Plaintiff corporations, who have instituted the instant suit in this Court, are foreign corporations, i.e., a Liberian corporation, and a Panamania corporation, said corporations not authorized to do business in the State of Florida, as they have not obtained a permit to transact business in this State, as required under Chapter 613 of the Florida Statutes. Reference is made to the Certificates of the State of Florida, Office of the Secretary of State, attached hereto, and made a part hereof, and labeled Defendants Exhibits "A" and "B"; that the failure of these corporations to obtain a permit to transact business in the State of Florida precludes these corporations from maintaining an action in a State Court of the State, pursuant to Florida Statute 613.04.

WHEREFORE, the premises considered, the Defendant Union prays that this Court dissolve and/or vacate the Temporary Injunction heretofore entered, and thereafter, dismiss or quash the Complaint, and dismiss this lawsuit.

KASTENBAUM, MAMBER, GOPMAN,
EPSTEIN & MILES
Attorneys for Defendant

By Allan M. Elster
For the Firm

Defendant's Motion to Dissolve and/or Vacate Temporary Injunction

I Hereby Certify that a true and correct copy of the foregoing Motion to Dissolve and/or Vacate Temporary Injunction was on this 2 day of August, 1966, mailed to Shutts & Bowen, Esquires, Attorneys for Plaintiffs, First National Bank Building, Miami, Florida; and Muller, Schenerlein & Bare, Esquires, Attorneys for Plaintiffs, 100 Biscayne Boulevard North, Miami, Florida.

Allan M. Elster

Defendant's Answer

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA

IN AND FOR DADE COUNTY

IN CHANCERY

Case No. 66C-5523 (Lee)

ANSWER TO COMPLAINT FOR INJUNCTIVE RELIEF

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S.A., a Panamanian corporation,

Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Defendant.

COMES Now, the Defendant, International Longshoremen's Association, Local 1416, AFL-CIO, by and through its undersigned attorneys, and files this, its Answer to Complaint for Injunctive Relief, without waiving its defense that this Court lacks jurisdiction over the subject matter of this suit, and says:

FIRST DEFENSE

That this Court lacks jurisdiction over the subject matter of this action by virtue of the fact that interstate and/or foreign commerce is involved or affected, and by virtue of the fact that the Plaintiffs have charged the Defendant

Union with engaging in activities which are either protected or prohibited by the National Labor Relations Act, and that, therefore, sole jurisdiction of this matter is in the jurisdiction of the National Labor Relations Board, and that this Court may not enjoin the activities complained of in the Complaint.

SECOND DEFENSE

That the Plaintiffs have charged the Defendant Union with engaging in activities which are protected by the Free Speech provisions of the First, Fifth, Ninth, Tenth and Fifteenth Amendments to the United States Constitution and by Section 13 of the Declaration of Rights of the Constitution of the State of Florida, and that, therefore, due to the fact that the activities charged to the Defendant Union are protected by the Free Speech provisions of the United States Constitution and by the Florida Constitution, as enumerated above, this Court may not enjoin said activities.

THIRD DEFENSE

That the Complaint fails to state a cause of action for which relief can be granted, in that the Complaint fails to allege that the activities charged to the Defendant Union were for unlawful purposes, and that the picketing was conducted in an illegal manner.

FOURTH DEFENSE

That the Plaintiff corporations who have instituted the instant suit in this Court are foreign corporation, i.e., a Liberian corporation, and a Panamanian corporation; that said corporations are not authorized to do business in the State of Florida, since they have not obtained a permit to

transact business in this State pursuant to Florida Statute 613.01. The failure of these foreign corporations to obtain a permit to transact business in the State of Florida precludes these corporations from maintaining an action in a State Court of this State, pursuant to Florida Statute 613.04. Reference is made to Defendant's Exhibit A, attached hereto.

FIFTH DEFENSE

That this Court lacks venue over this cause insofar as it relates to the Plaintiff, Ariadne Shipping Company, Limited, a Liberian corporation, in that the activities charged by the said Plaintiff corporation in the Complaint against the Defendant Union, show that this Plaintiff corporation does business solely in Broward County, Florida, and that the picketing and handbilling activities complained of by this Plaintiff corporation as allegedly conducted by the Defendant Union were conducted exclusively against the Plaintiff corporation in Broward County, Florida, and that, therefore, sole jurisdiction of this cause insofar as it relates to the activities of the Defendant Union against the Plaintiff corporation, Ariadne Shipping Company, Limited, a Liberian corporation, lies in Broward County, Florida.

SIXTH DEFENSE

1. Defendant is without knowledge as to the allegations in Paragraph 1 of the Complaint, and, therefore, neither admits nor denies said allegation, and demands strict proof thereof.

2. Defendant admits Paragraph 2 of the Complaint, insofar as it clearly states that the Defendant Union is a labor organization, an unincorporated association; that De-

fendant Union maintains an office at 816 Northwest 2nd Avenue, Miami, Florida, and that jurisdiction of this Defendant Union encompasses the loading and unloading of ships at Miami, Florida. Defendant denies all other allegations of such Paragraph 2, which either by inference or by allegation, allege that the jurisdiction of the Defendant Union is limited to the labor of loading and unloading ships at Miami, Florida.

3. Defendant denies the allegations of Paragraph 3 in the Complaint.

4. Defendant admits that it engaged in picketing and handbilling activities on the dates and at the premises alleged in Paragraph 4 of said Complaint, and admits that the legend on the picket signs as portrayed in Paragraph 4 of said Complaint is a correct portrayal of one of the legends utilized by the Defendant Union on its picket signs. Defendant denies all other allegations of said Paragraph 4.

5. Defendant denies Paragraphs 5, 6, 7 and 8 of the Complaint.

SEVENTH DEFENSE

As an for an additional affirmative defense, Defendant alleges that a labor dispute existed between the Labor Union and the Plaintiff Corporations, and that this labor dispute is evidenced not only by the legend on the picket signs, as alleged in the Complaint, but is further evidenced by an additional legend utilized by the Defendant Union, said legend not alleged in the Complaint, and said legend stating that the Plaintiff Corporations maintain sub-standard wages and working conditions lower than those established in the area by the Defendant Union.

Defendant's Answer

EIGHTH DEFENSE

As and for an additional affirmative defense, Defendant alleges that the injunctive order entered by this Court on the 26th day of May, 1966, which enjoined the Defendant Union from engaging in certain activities, goes beyond the scope of the allegations of the Complaint, in that it enjoins the Defendant Union from engaging in activities which were not complained of in the Complaint.

KASTENBAUM, MAMBER, GOPMAN,
EPSTEIN & MILES
Attorneys for Defendant

By ALLAN M. ELSTER
For the Firm

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer to Complaint for Injunctive Relief was on this 1 day of July, 1966, mailed to Shutts & Bowen, Esquires, Attorneys for Plaintiffs, First National Bank Building, Miami, Florida; and Muller, Schenerlein & Bare, Esquires, Attorneys for Plaintiffs, 100 Biscayne Boulevard North, Miami, Florida.

ALLEN M. ELSTER

Order of Circuit Court, Dade County, Florida, Amending Answer Nunc Pro Tunc, Filed and Entered May 11, 1967

In the Circuit Court of the Eleventh Judicial Circuit of Florida

Ind and For Dade County

In Chancery

Case No. 66C-5523 (Lee)

Ariadne Shipping Company, Limited, a Liberian corporation, and Evangeline Steamship Co., S.A., a Panamanian corporation,

Plaintiffs,

—vs—

International Longshoremen's Association, Local 1416, AFL-CIO,

Defendant.

Order Amending Answer Nunc Pro Tunc

This Cause, coming on to be heard, on the motion of Defendant, and Stipulation of respective counsel for Plaintiff and Defendant, for an Order permitting the Defendant to amend its answer, nunc pro tunc, to include therein the defense that the picketing engaged in by the Defendant was protected by the Fourteenth Amendment to the Constitution of the United States, and the Court, recognizing the Stipulation between counsel, and being otherwise fully advised in the premises, it is, upon consideration,

Ordered, Adjudged and Decreed, that the Defendant's Answer to the Complaint is hereby amended, nunc pro

tunc, to insert therein, in its Second Defense, the word Fourteenth, so that the third line of the said Defense shall read as follows:

"....provisions of the First, Fifth, Ninth, Tenth, Fourteenth and Fifteenth Amendments . . ."

DONE AND ORDERED in Chambers in the Dade County Courthouse, Miami, Florida, this 1 day of May, 1967.

THOMAS E. LEE, JR.

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Judge, Circuit Court

Transcript of Hearing Before Circuit Court, Dade County, Florida, on Plaintiffs' Motion For Temporary Restraining Order

[11] Mr. Gopman: Then, if the basis of his suit is a tort action, he does not have the right to come here and ask for an injunction. He should take it some place to seek a remedy.

Before we get into that, we have a motion to dismiss on the ground the same cases are before the Board. Motion to dismiss on the grounds of enjoining of this picketing would violate the First, Fifth and Fourteenth Amendments to the Constitution; that is, free speech, purely.

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[16] * * *

The Court: I have sustained the objection.

I do not think it would make any difference if they agreed, if counsel for plaintiffs agreed that they had substandard safety conditions; and I think the Court could probably take judicial notice of that—I am not going to do so at this point—but these foreign flag vessels do have substandard safety conditions as compared with American flag vessels.

Can you agree with that, counsel?

Mr. Muller: I wouldn't say substandard. I would use the term "different."

The Court: They have a lesser standard or less minimum standard required than do American ships.

* * * * *

[20] * * *

Mr. Gopman: With respect to whether or not it is a labor dispute, we refer to Marine Cooks and Stew-

ards AFL versus Panama Steamship Company, 362 (U.S.) 365; whereas, the United States Supreme Court ruled:

". . . A Federal District Court erroneously determined that, notwithstanding the existence of a labor dispute within the meaning of the Anti-Injunctive provisions of the Norris-LaGuardia Act, it had jurisdiction [21] to enjoin a union from circling a vessel with a picket boat as it entered an American port, on the ground the union's activities amounted to unlawful interference with foreign commerce and with the international economy of a vessel registered under the flag of a friendly foreign power.

"Such condition was not illegal under any statute or persuasive United States authority, nor was it concerned with the internal economy of the vessel since the union was interested in protecting the job opportunities of its own members and was not concerned with the interests of the foreign crews on the vessel . . ."

The Court: When was this case?

Mr. Gopman: This is a 1959 case, your Honor.

The Court: Go ahead with the next one.

Mr. Gopman: Here is a case where—By the way, your Honor, that was—I gave you that.

Now we have the 1963 case. It is Marlindo Compania Naviera S/A versus Seafarer's International Union of North American, Washington Superior Court case—we do not have a better citation than 47

Transcript of Hearing Before Circuit Court, Dade County, Florida, on Plaintiffs' Motion For Temporary Restraining Order

Labor Cases, [22] Paragraph 18,252. That is the CCH case.

Mr. Muller: What is the year?

Mr. Gopman: 1963.

The Court: Who is the plaintiff in that case?

Mr. Gopman: The ship's company was the plaintiff.

The Court: American or foreign flag?

Mr. Gopman: Foreign flag.

The Court: What does it say?

Mr. Gopman: It says:

"Court of a state, in which a foreign flag ship manned by a foreign crew, was docked, had no jurisdiction over a suit by the foreign owner of the ship to the extent that the action sought injunctive relief against picketing of the ship by an American union which resulted in a refusal of another union to unload the docked vessel, since the conduct complained of was within the exclusive jurisdiction of the National Labor Relations Board.

"The union activity falling within the provisions of the National Labor Relations Act and the ship owner qualifying as a person under the definitions [23] of terms in that Act, the State court was preempted of jurisdiction."

Again, we have a case from Louisiana. South Georgia Company, Ltd. versus Marine Engineers Beneficial Association. This case—again, we have no better citation than the labor case citation—44 Labor Cases, Paragraph 17,481.

Transcript of Hearing Before Circuit Court, Dade County, Florida, on Plaintiffs' Motion For Temporary Restraining Order

"The picketing of a foreign vessel to protest the loss of jobs by United States seamen with the utilization of that particular ship to transport grain purchased by a foreign government under the Agricultural Trade Development and Assistance Act is a labor dispute within the meaning of the National Labor Relations Act. Therefore, the jurisdiction of a State court to enjoin the picketing is pre-empted by the National Labor Relations Board when it is not shown that upon application the National Labor Relations Board has declined jurisdiction."

They can do the same thing in this case, walk across the street and file there; and immediately get a decision from the Board as to whether or not they would take or decline jurisdiction. The Board will say: "We will" or "We will not take jurisdiction." And then [24] later on they will say, "We will" or "We will not enjoin this," but the first thing is whether they will take jurisdiction in this case.

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[26] • • •

Mr. Muller: There is no question whatsoever that the National Labor Relations Board does not have jurisdiction under these foreign flag cases.

To give the Court a little background—prior to 1963, there were attempts by the NMU Seafarers to organize these cruise ships up and down the East Coast.

A number of petitions for election were filed. During that time—some were won and some were not

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won. At that time, one of the foreign flag group of ships enjoined the Regional Director of the National Labor Relations Board in Washington and another in Florida—enjoined the employer in Washington, D. C. from proceeding with an election.

The United States Supreme Court took their cases and issued its decision in February, 1963, holding clearly there is no jurisdiction in National Labor Relations Board in these foreign flag ships—or over the foreign flag ships.

Now, I couldn't catch all the names [27] that counsel read, but several of the cases, I know, have turned on the issue the employer goes into Federal court and is hit with the Norris-LaGuardia Act.

The court says, "We cannot give you an injunction on this," and they cite Norris-LaGuardia. And, I think, in one of the cases, counsel cited that.

But as far as this complaint going before the National Labor Relations Board, it is not so. I have a case here: Sociedad Nacional de Marineros versus McCulloch, 372 (U.S.) 10.

They decided in February, 1963, that it very clearly sets out there is no jurisdiction of the National Labor Relations Board—

The Court: Do any of these local Circuit Courts have jurisdiction over any of these cases?

Mr. Muller: This Court has jurisdiction.

Is that what you are asking about, Judge?

The Court: What one are you talking about? Are there any other cases presently pending in the Circuit Court on these matters?

Transcript of Hearing Before Circuit Court, Dade County, Florida, on Plaintiffs' Motion For Temporary Restraining Order

Mr. Muller: Not that we know of.

The Court: Wasn't there another suit filed?

[28] Mr. Muller: Yes; but that was not against a foreign flag corporation. That was Eastern Steamship Lines. They are in Florida and they were enjoined against picketing against Eastern.

Mr. Gopman: Solely because that company did not operate the vessel.

Mr. Muller: Judge, there is not the slightest question the National Labor Relations Board does not have jurisdiction in this case.

The Court: That is the problem I have. It is my understanding that the National Labor Relations Board does not and has not in several years taken jurisdiction in any case of a foreign flag vessel; and it is its policy it doesn't because of a Supreme Court decision and as a result of the United States' policy and the President and everybody else.

Mr. Muller: That is the rationale of this case.

Mr. Gopman: But that is limited to the activities that go on in the vessel outside of the American waters. For the elections by the employees of that vessel or the ship's sailors, it has nothing to do with the employees while they are on American [29] shores and only engaged in activities on American shores.

There are cases where they have taken jurisdiction—they can take jurisdiction.

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[31] * * *

The Court: Why are you picketing?

Transcript of Hearing Before Circuit Court, Dade County, Florida, on Plaintiffs' Motion For Temporary Restraining Order

Mr. Gopman: We are picketing to require the boat owner to pay to employes doing the work of loading and unloading the boat in the docks here—not outside the three-mile limit —wages we have gained for our employees. Nothing else. That is all. That is what we seek.

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[42] • • •

CLEVELAND TURNER, was called as a witness by the defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Gopman:

Q. Please state your full name. A. Cleveland Turner.

[43] Q. What is your occupation? A. President of the National Longshoremen's Association, Local 1416, AFL-CIO, Miami, Florida.

The Court: Did you succeed Judge Henderson?
The Witness: Yes.

By Mr. Gopman:

Q. Mr. Turner, were you in charge of the picketing going on, which we have been discussing here? A. Yes.

Q. What type of picketing sign did you display in Miami? A. On the ship, we displayed a substandard wage sign on the ship loading cargo. In front of the International Terminal, we put the unsafe sign.

The Court: When did you put up those signs? At what time?

Transcript of Hearing Before Circuit Court, Dade County, Florida, on Plaintiffs' Motion For Temporary Restraining Order

By Mr. Gopman:

Q. At what time did you cause the picket to carry the substandard wage sign? A. Whenever a ship docks. The ship docks and we put our sign up—the substandard wage sign.

Q. Specifically, what type of work were you interested in protesting the payment of substandard wages? [44] A. Loading of the ship, stowage and loading of automobiles, loading cargo and ship stowage.

Q. Were these performed by employees of the ship, to your knowledge? A. Part of it by employees of the ship and some of it by outside labor.

Mr. Gopman: I have no further questions.

Cross Examination by Mr. Leslie:

Q. The only question I have is what day was this we are talking about? Was this the past Monday? A. The past Monday they didn't load ship stowage.

Q. I mean, your sign. A. Last Monday, substandard wage sign.

Q. On this dock? A. No. Substandard wage sign on this dock—last Monday.

Q. Nothing on the Ariadne dock? A. The Ariadne—Friday a week ago, we had substandard wages.

Q. That is the one you have been enjoined—I mean, did you have a sign saying the Ariadne paid [45] substandard wages? A. Monday, I didn't; but I had on the ship Monday in Miami.

Q. On the ship? You mean— A. In front of the ship, on the dock.

Transcript of Hearing Before Circuit Court, Dade County, Florida, on Plaintiffs' Motion For Temporary Restraining Order

Q. Is your union a trusteeship, by the way, sir? A. It is not.

Q. When was it—

Mr. Gopman: I object. It is not a trusteeship and—

Mr. Leslie: No further questions.

Mr. Gopman: Your Honor, I would like a stipulation from them that they are engaged in interstate commerce in sufficient amounts for the Board to take jurisdiction of each corporation.

Mr. Muller: I do not believe it is interstate.

Mr. Gopman: Foreign commerce in sufficient amounts over $50,000 worth of purchases.

The Court: In the local market?

Mr. Muller: We are engaged in foreign commerce and our receipts from such foreign commerce [46] is in excess of $50,000 annually.

Mr. Gopman: Okay.

Mr. Muller: The plaintiffs, that is.

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[48] • • •

The motion to dismiss and quash on general grounds and Constitutional grounds and lack of jurisdiction and the supplemental motion to dismiss and quash on the basis of noncompliance with Florida Statute 613.01 and 613.02, are denied.

The Court finds there is no labor dispute involved here, and this Court has jurisdiction; that the acts of the union are in violation of Florida law; and that the picketing, the enjoining of the picketing would

not be an enjoining of free speech as guaranteed by the Constitution of the United States; and, therefore, the union will be enjoined as prayed for in the Complaint; and the plaintiffs will be required to post a bond in the amount of $5,000.

Mr. Muller: Would the Court find the [49] National Labor Relations Board has no jurisdiction in this matter?

The Court: The Court so found by saying there is no labor dispute involved; and it involves all the matters that are involved in this Court.

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